

DETAILED ACTION

1. Applicant's arguments filed on June 28, 2010 has been entered. Claims 1-25 and 29-31 are pending. Claim 26-28 is canceled by the applicant. At this time, claims 1-25 and 29-31 are still rejected.

Response to Arguments

2. Applicant's arguments filed June 28, 2010, under 35 USC 102, have been fully considered, and they are persuasive. However, upon further search and consideration, the new ground(s) of rejection is made in view of Takahashi (US 2003/0159064 A1).

Applicant's arguments filed June 28, 2010, under 35 USC 101, have been fully considered, but they are not persuasive.

As mentioned in the previous office action, although claim 22 has "storage" language, it does not prove to be statutory, since this term "computer-readable storage medium" does not support anywhere in the specification, which could construe as new matter. Therefore, claim 22 is still found non-statutory. In addition, the specification still recites **a propagated signal** (see paragraph [0012] of page 4 of specification), wherein the computer program product could embodied and transferred via a propagated signal. Therefore, the 101 rejection is still maintained.

Claims 23-27 are depended on claim 22, thus they are rejected with the same rationale applied against claim 22 above.

Claims 10 and 16 are also non-statutory. While these claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. § 101 must (1) be tied to a particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. Specifically, claim 10 recites "a network security method comprising: determining one or more quantities... calculating security protection....", but nowhere in the claim does it state what particular apparatus does (or is positively tied with) these series of steps. Because the instant claim is neither positively tied to a particular machine that accomplishes the claimed method steps nor transforms underlying subject matter of the

claim to a different state or thing, the claim therefore does not qualify as a statutory process under 35 U.S.C. § 101.

As to dependent claims 11-15 and 17-21, they are rejected under 35 U.S.C. § 101 for depending upon the non-statutory subject matter recited by independent claim 10 and 16, respectively.

Applicant's arguments filed June 28, 2010, under 35 USC 112 1st paragraph, have been fully considered, but they are not persuasive.

Claims 29-31 are rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although applicant has tried to point out paragraphs [0038-0039] and Figure 3 of specification supported the rejection, examiner still does not see the connection in these claims that read in light of specification. Appropriate correction is required by the applicant.

Applicant's arguments filed June 28, 2010, under 35 USC 112 2nd paragraph, have been fully considered, but they are not persuasive.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim limitations in claim 16 uses the phrase "means for" or "step for", but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because it is unclear whether the recited structure is sufficient for performing the claimed function. In this situation, it is unclear the recited structure in the claim would preclude application of 112, 6th (failing the 3rd prong of the analysis).

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase

"means for" or "step for" is clearly not modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does not wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase "means for" or "step for").

For the above reasons, it is believed that the rejections (35 USC 112 2nd paragraph and 35 USC 101) should be sustained.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 29-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 29 recites the language "determining a monetary value associated with the damages avoided." These languages of "determining a monetary value" does not support by the specification. Appropriate correction is required.

Claim 30 recites the language "determining a first portion of damages...." These languages of "determining a first portion" does not support by the specification. Appropriate correction is required.

Claim 31 recites the language "determining a count of the one ore more blocked attacks." These languages of "determining a count" does not support by the specification. Appropriate correction is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: component or unit or module wherein claim element is a means (or step) plus function that invokes 35 U.S.C. 112, sixth paragraph. However, written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed invention. Thus, these essential missing component or unit or module is important and necessary to connect its relationship with the step of processing. Appropriate correction is required.

Claims 17-21 have limitation that are similar to those of claim 16, thus it is rejected with the same rationale applied against claim 16 above.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 10-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

- a. *Referring to claim 22:*

Claim 22 recites "a computer program embodied in a computer-readable storage medium, and comprising computer instructions for: quantifying damages avoided by one or more blocked attacks; and calculating security protection consumption during a period of time." It appears that any digital or analog signal can be transmitted to recordable type media to be stored thereon which direct the claims signal

per se, therefore, claim 22 is non-statutory. In addition, the claim is clearly a software program and it is non-statutory as not being tangibly embodied in a manner so as to be executable. Furthermore, applicant has pointed out in the specification (paragraph [0012] of page 4) that the computer readable medium may comprise a disk, a device, **and/or a propagated signal**, which clearly including intangible media such as signals, carrier waves, transmissions, optical waves, transmission media or other media incapable of being touched or perceived absent the tangible medium through which they are conveyed. Therefore, claim 22 recites a non-statutory subject matter. Appropriate correction required. See MPEP 2106.

Claims 23-27 are depended on claim 22, thus they are rejected with the same rationale applied against claim 22 above.

b. Referring to claim 10:

i. This claim has limitations that is similar to those of claim 22, thus it is rejected with the same rationale applied against claim 22 above.

Claims 11-15 are depended on claim 10, thus they are rejected with the same rationale applied against claim 10 above.

c. Referring to claim 16:

i. This claim has limitations that is similar to those of claim 22, thus it is rejected with the same rationale applied against claim 22 above.

Claims 17-21 are depended on claim 16, thus they are rejected with the same rationale applied against claim 16 above.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liang (US 7,062,553 B2), and further in view of Takahashi (US 2003/0159064).

a. Referring to claim 1:

i. Liang teaches a system comprising:

(1) a processor (**column 4, line 29; column of Liang**); and a memory, coupled to the processor, wherein the memory is configured to provide the processor with instructions (**column 8, lines 38-44 of Liang**) which when executed cause the processor to: determining one or more quantities of damages avoided by one or more blocked attacks (**see Figure 4, element 1402 and Figure 5, element 1502; column 2, line 66 through column 3, line 19 of Liang**); and calculate security protection consumption during a period of time (**see abstract; column 2, lines 34-44; column 11, lines 7-20 of Liang**).

ii. Although Liang teach the processor, memory as shown in column 8, lines 38-44, Liang does not clearly mention that (1) memory is coupled or associated with CPU or processor to execute the program task (if indeed is not inherently) (2) determining the quantities of damages. However, Takahashi teaches (1) in paragraph [0048] and (2) in Figure 1, element 36, Figure 2, element S2, and Figure 3, element S15 of Takahashi.

iii. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

(1) modified the invention of Liang (if indeed is not inherently) with the teaching of Takahashi to execute the program for antivirus control in a network system and, more particularly, damage control against virus outbreak in a network environment with a plurality of device nodes under malicious code attack (column 1, lines 15-18 of Liang).

iv. The ordinary skilled person would have been motivated to:

(1) modified the invention of Liang (if indeed is not inherently) with the teaching of Takahashi for effectively executing the program for

managing damage caused by a computer virus epidemic in a network environment by effectively and rapidly distributing antivirus protection and cure measures within the network so as to optimally reduce the level of damage during the virus epidemic (column 2, lines 29-33 of Liang).

b. Referring to claim 2:

i. Liang further teaches:

(1) wherein determining one or more quantities damages includes determining whether a blocked attack would have exploited a network vulnerability (see **Figure 4, element 1402 and Figure 5, element 1502; column 9, lines 1-11 of Liang**).

c. Referring to claim 3:

i. Liang further teaches:

(1) wherein determining whether a blocked attack would have exploited network vulnerability includes replaying the attack on an internal network (e.g., LAN) (**column 9, lines 1-11 of Liang**).

d. Referring to claim 4:

i. Liang further teaches:

(1) further comprising a scanner configured to scan one or more devices for vulnerabilities (**column 10, lines 22-31 and 51-63 of Liang**).

e. Referring to claim 5:

i. Liang further teaches:

(1) wherein the scanner is configured to quantify the risk of one or more devices (**column 11, lines 7-20 of Liang**).

f. Referring to claim 6:

i. Liang further teaches:

(1) wherein the scanner is located within a customer network (**column 10, lines 51-63 of Liang**).

g. Referring to claim 7:

i. Liang further teaches:

(1) further comprising an intrusion suppression module configured to block attacks **(column 2, lines 40-44; column 7, line 66 through column 8, line 2 of Liang)**.

h. Referring to claim 8:

i. Liang further teaches:

(1) wherein the intrusion suppression module is configured to maintain a list of attacks sustained and blocked during a period of time **(column 6, lines 56-67; column 2, lines 34-44; column 11, lines 7-20 of Liang)**.

i. Referring to claim 9:

i. Liang further teaches:

1) wherein the intrusion suppression module is located outside (e.g., remote location) a customer network **(column 9, lines 5-7 of Liang)**.

j. Referring to claims 10-15:

i. These claims consist a network security method to implement from the network security apparatus of claim 1, thus they are rejected with the same rationale applied against claims 1-9 above.

k. Referring to claims 16-21:

i. These claims have limitations that are similar to those of claims 1-9, thus they are rejected with the same rationale applied against claims 1-9 above.

l. Referring to claims 22-27:

i. These claims consist a computer program stored on a computer-readable storage medium to implement by the network security method of claim 10 from the system of claim 1, thus they are rejected with the same rationale applied against claims 1-9 above.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhnga (Tanya) Truong whose telephone number is 571-272-3858.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Taghi Arani can be reached at 571-272-3787. The fax and phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

/Thanhnga B. Truong/
Primary Examiner, Art Unit 2438

TBT
November 3, 2010

